IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.9406 OF 2005

Rahiman Pilu Patel Petitioner

versus

Lala Pilu Patel, since deceased through LRs and others Respondents

Mr.R.S.Kate for petitioner.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 6th February 2006

PC :

1. Heard Shri Kate for the petitioner. Perused with his assistance the annexures to the petition including the objections raised.

2. In my view, the Executing Court was in no error in dismissing the objection to the enforceability and executability of the decree in question. It is rightly held by the Executing Court that under the scheme of the Code of Civil Procedure a preliminary decree for partition has to be passed and the same cannot be effected unless there is a final decree. In the present

case, a final decree is not yet passed and therefore, all such objections, as are raised by the petitioner, cannot survive. The Executing Court has protected the petitioner and the objections, as raised by him, would be considered in case the final decree is passed and/or sought to be enforced and executed. No reason to interfere. Petition dismissed.

(S.C.DHARMADHIKARI, J.)